

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

The Examiner is thanked for finding patentable distinctness between different disclosed and claimed species of applicant's invention (i.e., neither of which can be found "obvious" in view of the other under 35 U.S.C. §103).

However, the Examiner's statement of the restriction requirement is perhaps not fully understood. In particular, the restriction requirement is said to be between species A (Figures 1-16 drawn to a tunable optical source) and species B (Figures 17-18 drawn to a tunable optical filter). However, as is perhaps more evident from the accompanying correction to the specification at page 12, there is no Figure 18 and Figure 17 is actually directed to an alternative embodiment wherein the zone plate device of this invention is being used as a switch (e.g., see also page 30, lines 1-13).

Perhaps the Examiner intended to refer to claims 1-25 which were originally drawn to a "tunable optical source" (utilizing applicant's novel tunable zone plate device) and claims 26-38 drawn more directly to applicant's tunable optical zone plate device and methods of tuning same.

In any event, by the above amendment, applicant has hopefully mooted any such restriction requirement by insuring that all claims are now directed explicitly to a tunable

SIDORIN
Appl. No. 10/046,914
August 27, 2003

optical device and a method for tuning same. Of course, it will be noted that some of the dependent claims do recite utilization of the tunable optical device in connection with wavelength selective feedback to a laser diode optical source (e.g., see new dependent claim 42 which is substantially similar if not identical in scope to original claim 1). However, since these "tunable optical source" claims (e.g., new dependent claims 42-60) are in dependent form, earlier parent claims are clearly also in generic form and thus all claims should be allowable in this same application even though patentably distinct.

To insure complete responsiveness to the outstanding action, as best the outstanding restriction requirement is presently understood, the applicant hereby elects the patentably distinct species drawn to a tunable optical filter on which at least claims 26-41 are believed readable. Furthermore, the ones of these claims that are parent claims to dependent claims 42-60 are believed to be generic claims with respect to the patentably distinct species of a "tunable optical source". Various aspects of applicant's tunable optical device (including its filtering properties) are believed to be depicted, in varying degrees and in various aspects, in all of the Figures 1-17.

Accordingly, the outstanding restriction requirement is believed to have now been mooted -- especially if applicant's generic claims are found allowable since that will pave the way for allowable of all now pending claims 26-60. A formal Notice to that effect is respectfully solicited.

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Respectfully submitted,

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